



March 13, 2009

ENGROSSED HOUSE BILL No. 1637

DIGEST OF HB 1637 (Updated March 11, 2009 12:47 pm - DI 106)

Citations Affected: IC 5-20; IC 33-37.

Synopsis: Funding for foreclosure counseling. Creates a \$50 court fee on persons filing an action to foreclose a mortgage for purposes of providing sufficient money to provide foreclosure prevention counseling and assistance programs.

Effective: Upon passage.

Bardon

(SENATE SPONSORS — CHARBONNEAU, BRODEN, HOLDMAN)

January 16, 2009, read first time and referred to Committee on Financial Institutions.
February 2, 2009, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.
February 19, 2009, reported — Do Pass.
February 23, 2009, read second time, amended, ordered engrossed.
February 24, 2009, engrossed.
February 25, 2009, read third time, passed. Yeas 59, nays 33.

SENATE ACTION

March 3, 2009, read first time and referred to Committee on Judiciary.
March 12, 2009, reported favorably — Do Pass; reassigned to Committee on Appropriations.

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EH 1637—LS 7043/DI 51+



March 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1637

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-37-4-4, AS AMENDED BY P.L.174-2006,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee
4 of one hundred dollars (\$100) from a party filing a civil action. This
5 subsection does not apply to the following civil actions:

6 (1) Proceedings to enforce a statute defining an infraction under
7 IC 34-28-5 (or IC 34-4-32 before its repeal).

8 (2) Proceedings to enforce an ordinance under IC 34-28-5 (or
9 IC 34-4-32 before its repeal).

10 (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.

11 (4) Proceedings in paternity under IC 31-14.

12 (5) Proceedings in small claims court under IC 33-34.

13 (6) Proceedings in actions described in section 7 of this chapter.

14 (b) In addition to the civil costs fee collected under this section, the
15 clerk shall collect the following fees, if they are required under
16 IC 33-37-5:

17 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or

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1 IC 33-37-5-4).

2 (2) A support and maintenance fee (IC 33-37-5-6).

3 (3) A document storage fee (IC 33-37-5-20).

4 (4) An automated record keeping fee (IC 33-37-5-21).

5 (5) A public defense administration fee (IC 33-37-5-21.2).

6 (6) A judicial insurance adjustment fee (IC 33-37-5-25).

7 (7) A judicial salaries fee (IC 33-37-5-26).

8 (8) A court administration fee (IC 33-37-5-27).

9 (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).

10 (10) A garnishee service fee (IC 33-37-5-28(b)(3) or
11 IC 33-37-5-28(b)(4)).

12 **(11) A mortgage foreclosure counseling and education fee**
13 **(IC 33-37-5-30).**

14 SECTION 2. IC 33-37-5-30 IS ADDED TO THE INDIANA CODE
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
16 UPON PASSAGE]: **Sec. 30. This section applies to a civil action in**
17 **which the clerk is required to collect a civil costs fee under**
18 **IC 33-37-4-4(a). The clerk shall collect a fifty dollar (\$50) mortgage**
19 **foreclosure counseling and education fee from a party filing an**
20 **action to foreclose a mortgage.**

21 SECTION 3. IC 33-37-7-2, AS AMENDED BY P.L.122-2008,
22 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall
24 distribute semiannually to the auditor of state as the state share for
25 deposit in the state general fund seventy percent (70%) of the amount
26 of fees collected under the following:

27 (1) IC 33-37-4-1(a) (criminal costs fees).

28 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).

29 (3) IC 33-37-4-3(a) (juvenile costs fees).

30 (4) IC 33-37-4-4(a) (civil costs fees).

31 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).

32 (6) IC 33-37-4-7(a) (probate costs fees).

33 (7) IC 33-37-5-17 (deferred prosecution fees).

34 (b) The clerk of a circuit court shall distribute semiannually to the
35 auditor of state for deposit in the state user fee fund established in
36 IC 33-37-9-2 the following:

37 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
38 interdiction, and correction fees collected under
39 IC 33-37-4-1(b)(5).

40 (2) Twenty-five percent (25%) of the alcohol and drug
41 countermeasures fees collected under IC 33-37-4-1(b)(6),
42 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

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(3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance account established by IC 5-2-6-23(h) one hundred percent (100%) of the sexual assault victims assistance fees collected under

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1 IC 33-37-5-23.

2 (g) The clerk of a circuit court shall distribute monthly to the county
3 auditor the following:

4 (1) One hundred percent (100%) of the support and maintenance
5 fees for cases designated as non-Title IV-D child support cases in
6 the Indiana support enforcement tracking system (ISETS)
7 collected under IC 33-37-5-6.

8 (2) The percentage share of the support and maintenance fees for
9 cases designated as IV-D child support cases in ISETS collected
10 under IC 33-37-5-6 that is reimbursable to the county at the
11 federal financial participation rate.

12 The county clerk shall distribute monthly to the office of the secretary
13 of family and social services the percentage share of the support and
14 maintenance fees for cases designated as Title IV-D child support cases
15 in ISETS collected under IC 33-37-5-6 that is not reimbursable to the
16 county at the applicable federal financial participation rate.

17 (h) The clerk of a circuit court shall distribute monthly to the county
18 auditor the following:

19 (1) One hundred percent (100%) of the small claims service fee
20 under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in
21 the county general fund.

22 (2) One hundred percent (100%) of the small claims garnishee
23 service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for
24 deposit in the county general fund.

25 (i) This subsection does not apply to court administration fees
26 collected in small claims actions filed in a court described in IC 33-34.
27 The clerk of a circuit court shall semiannually distribute to the auditor
28 of state for deposit in the state general fund one hundred percent
29 (100%) of the following:

30 (1) The public defense administration fee collected under
31 IC 33-37-5-21.2.

32 (2) The judicial salaries fees collected under IC 33-37-5-26.

33 (3) The DNA sample processing fees collected under
34 IC 33-37-5-26.2.

35 (4) The court administration fees collected under IC 33-37-5-27.

36 (j) The clerk of a circuit court shall semiannually distribute to the
37 auditor of state for deposit in the judicial branch insurance adjustment
38 account established by IC 33-38-5-8.2 one hundred percent (100%) of
39 the judicial insurance adjustment fee collected under IC 33-37-5-25.

40 (k) The proceeds of the service fee collected under
41 IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as
42 follows:

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(1) The clerk shall distribute one hundred percent (100%) of the service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(l) The proceeds of the garnishee service fee collected under IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(m) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the home ownership education account established by IC 5-20-1-27 one hundred percent (100%) of the mortgage foreclosure counseling and education fees collected under IC 33-37-5-30.

SECTION 4. IC 5-20-1-27, AS AMENDED BY P.L.145-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) The home ownership education account within the state general fund is established to support: ~~the~~

(1) home ownership education programs established under section 4(d) of this chapter; and

(2) mortgage foreclosure counseling and education programs established under IC 5-20-6-2.

The account is administered by the authority.

(b) The home ownership education account consists of:

(1) **court** fees collected under ~~IC 24-9-9;~~ **IC 33-37-5-30;** and

(2) civil penalties imposed and collected under:

(A) IC 6-1.1-12-43(g)(2)(B); or

(B) IC 27-7-3-15.5(e).

(c) The expenses of administering the home ownership education account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 5. IC 5-20-6-3, AS ADDED BY P.L.176-2007,

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1 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 3. **In addition to money provided for the**
3 **program from court fees under IC 33-37-5-30**, the authority may
4 solicit contributions and grants from the private sector, nonprofit
5 entities, and the federal government to assist in carrying out the
6 purposes of this chapter.
7 SECTION 6. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1637, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 8, line 5, strike "(1) fees collected under IC 24-9-9;".

Page 8, line 6, strike "(2)" and insert "(1)".

Page 8, line 9, delete "(3)" and insert "(2)".

Page 8, line 20, delete "IC 5-20-1-27," and insert "**IC 5-13-12-12,**".

and when so amended that said bill do pass.

(Reference is to HB 1637 as introduced.)

BARDON, Chair

Committee Vote: yeas 7, nays 4.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1637, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 14, nays 4.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1637 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Page 1, delete lines 1 through 17, begin a new paragraph, and insert:

"SECTION 1. IC 33-37-4-4, AS AMENDED BY P.L.174-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee of one hundred dollars (\$100) from a party filing a civil action. This subsection does not apply to the following civil actions:

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- (1) Proceedings to enforce a statute defining an infraction under IC 34-28-5 (or IC 34-4-32 before its repeal).
 - (2) Proceedings to enforce an ordinance under IC 34-28-5 (or IC 34-4-32 before its repeal).
 - (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
 - (4) Proceedings in paternity under IC 31-14.
 - (5) Proceedings in small claims court under IC 33-34.
 - (6) Proceedings in actions described in section 7 of this chapter.
- (b) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A support and maintenance fee (IC 33-37-5-6).
- (3) A document storage fee (IC 33-37-5-20).
- (4) An automated record keeping fee (IC 33-37-5-21).
- (5) A public defense administration fee (IC 33-37-5-21.2).
- (6) A judicial insurance adjustment fee (IC 33-37-5-25).
- (7) A judicial salaries fee (IC 33-37-5-26).
- (8) A court administration fee (IC 33-37-5-27).
- (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).
- (10) A garnishee service fee (IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4)).
- (11) A mortgage foreclosure counseling and education fee (IC 33-37-5-30).**

SECTION 2. IC 33-37-5-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 30. This section applies to a civil action in which the clerk is required to collect a civil costs fee under IC 33-37-4-4(a). The clerk shall collect a fifty dollar (\$50) mortgage foreclosure counseling and education fee from a party filing an action to foreclose a mortgage.**

SECTION 3. IC 33-37-7-2, AS AMENDED BY P.L.122-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2. (a) The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:**

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-3(a) (juvenile costs fees).
- (4) IC 33-37-4-4(a) (civil costs fees).



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(5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).

(6) IC 33-37-4-7(a) (probate costs fees).

(7) IC 33-37-5-17 (deferred prosecution fees).

(b) The clerk of a circuit court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9-2 the following:

(1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).

(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

(3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

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(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance account established by IC 5-2-6-23(h) one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

(g) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-37-5-6.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the small claims service fee under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in the county general fund.

(2) One hundred percent (100%) of the small claims garnishee service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for deposit in the county general fund.

(i) This subsection does not apply to court administration fees collected in small claims actions filed in a court described in IC 33-34. The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the following:

(1) The public defense administration fee collected under

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IC 33-37-5-21.2.

(2) The judicial salaries fees collected under IC 33-37-5-26.

(3) The DNA sample processing fees collected under IC 33-37-5-26.2.

(4) The court administration fees collected under IC 33-37-5-27.

(j) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2 one hundred percent (100%) of the judicial insurance adjustment fee collected under IC 33-37-5-25.

(k) The proceeds of the service fee collected under IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(l) The proceeds of the garnishee service fee collected under IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(m) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the home ownership education account established by IC 5-20-1-27 one hundred percent (100%) of the mortgage foreclosure counseling and education fees collected under IC 33-37-5-30."

Delete pages 2 through 6.

Page 7, delete lines 1 through 36.

Page 8, line 5, reset in roman "(1)".

Page 8, line 5, after "(1)" insert "**court**".

Page 8, line 5, reset in roman "fees collected under".

Page 8, line 5, after "IC 24-9-9;" insert "**IC 33-37-5-30;**".

Page 8, line 5, reset in roman "and".

Page 8, line 6, reset in roman "(2)".

Page 8, line 6, delete "(1)".

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Page 8, line 8, delete "; and" and insert ".".

Page 8, delete lines 9 through 10.

Page 8, line 20, after "program" insert "**from court fees**".

Page 8, line 20, delete "IC 5-13-12-12," and insert "**IC 33-37-5-30,**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1637 as printed February 20, 2009.)

BARDON

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1637, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS and be reassigned to the Senate Committee on Appropriations.

(Reference is made to House Bill 1637 as printed February 24, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

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